

REMARKS

As an initial matter, it is noted that in the Advisory Action dated May 8, 2008, the Examiner has indicated that the amendments will not be entered and that the proposed amendments filed on March 25, 2008, raise new issues that would require further consideration and/or search. Claims amendments and the arguments presented herein are same as those submitted on March 25, 2008.

Claims 1-8, 10-14, 16, 21, 28, 31, and 38-40 are pending in this Application with Claims 10, 11, 16, 21, 28, 31, and 38-40 having been withdrawn from consideration by the Examiner. Claims 1, 16, and 28 have been amended. Claims 13, 14, 21 have been cancelled. New Claim 41 has been added. Upon entry of this Amendment and Response, Claims 1-8, 10-12, 16, 28, 31, and 38-41 will be pending in this Application with Claims 10, 11, 16, 28, 31, and 38-40 having been withdrawn from consideration by the Examiner.

In general, Claims 1, 16, 28 have been amended to a method for treating a disease associated with herpes virus infection.

Rejection under 35 U.S.C. §112

Claim 14 is rejected under 35 U.S.C. §112, second paragraph, as allegedly being indefinite for failing to particularly point out and claim the subject matter which Applicant regards as the invention. In particular, the Office Action alleges insufficient antecedent basis for the use of the term “substance” in line 1 of Claim 14.

Claim 14 has been cancelled rendering this rejection moot.

Rejection Under 35 USC §103(a)

Claims 1-8 and 12-14 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over U.S. Patent No. 5,532,215, issued to Lezday (the “Lezday Patent”) and U.S. Patent 5,358,721, issued to Guittard et al. (the “Guittard et al. Patent”). The Office Action alleges that “it would have been obvious to combine two methods useful in treating the same condition and one of ordinary skill in the art would have had an expectation of at least additive effect.” See page 4 of the Office Action.

Claims have been amended as a method for treating a disease associated with herpes virus infection. In particular, as stated on page 4, lines 9-10, of the specification some diseases associated with herpes infection are due to various enzymes, cytokines, nitric oxide, apoptosis, etc. and not necessarily due to the herpes virus itself. ("It is known that in some instances the degradative action of serine proteases results in serious pathological conditions or disease states.")

Both of the Lezday and the Guittard et al. patents discuss methods for inhibiting and/or preventing replication of virus itself. In contrast, as amended pending claims are directed to treating diseases associated with the herpes virus infection not killing or preventing the replication of herpes virus.

In view of the above, it is respectfully submitted that the rejection of the Claims under 35 U.S.C. §103(a) over the Lezday Patent in view of the Guittart et al. Patent is moot and should be withdrawn.

CONCLUSION

In view of the foregoing, it is respectfully submitted that all claims now pending in this Application are in condition for allowance. Therefore, an early Office Action to that effect is earnestly solicited. If the Examiner believes a telephone conference would aid in the prosecution of this case in any way, please call the undersigned at (303) 955-8103.

Respectfully submitted,

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